

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 995

Introduced by Assembly Member Canciamilla

February 22, 2005

An act to add and repeal Sections 17053.58 and 23658 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 995, as amended, Canciamilla. Taxation: small business health insurance: credit.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

~~This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2006, and before January 1, 2011, in an amount equal to 50% of the amount paid or incurred during the taxable year for qualified employee health insurance expenses, as defined, by a qualified small employer, as defined. This bill would enact the Small Employer Health Coverage Incentive Act of 2005, which would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2006, and before January 1, 2011, for specified amounts paid or incurred during the taxable year by an eligible employer to provide health coverage for an eligible individual and that individual's dependent or dependents, as specified. The credit would be in an amount equal to the greater of \$100 per month or 50% of the monthly costs incurred by an eligible employer for health coverage for eligible individuals and their dependents, as provided. This bill would also require the Legislative~~

Analyst to report to the Legislature on the impact of the tax credits by December 1, 2009.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Small Employer Health Coverage Incentive Act of 2005.*

3 *SEC. 2. The Legislature finds and declares all of the*
4 *following:*

5 *(a) According to recent report by the U.C.L.A. Center for*
6 *Health Policy Research, 6.5 million Californians were uninsured*
7 *in 2003, representing 20 percent of Californians-more people*
8 *than the entire populations of Connecticut, Maine, Rhode Island,*
9 *and Vermont combined.*

10 *(b) The uninsured are predominantly low- and*
11 *moderate-income working families and individuals who do not*
12 *qualify for government-sponsored health insurance, who work*
13 *for employers who do not offer coverage, or who cannot afford*
14 *the employee share of the premium.*

15 *(c) According to a 2002 survey of small businesses by the*
16 *Kaiser Family Foundation, three-quarters of small business*
17 *executives that do not offer health insurance for their employees*
18 *cite cost as a primary barrier.*

19 *(d) According to a 2002 report by the federal Agency for*
20 *Health Care Research and Quality, 95 percent of California*
21 *businesses with 100 or more employees offer health insurance for*
22 *its employees, while only 38 percent of California businesses*
23 *with fewer than 10 employees offer health insurance to their*
24 *employees.*

25 *(e) A prudent means of making health insurance coverage*
26 *more available is to provide a tax credit to small employers to*
27 *encourage the provision of health coverage by the employer.*

28 *SEC. 3. Section 17053.58 is added to the Revenue and*
29 *Taxation Code, to read:*

30 *17053.58. (a) For each taxable year beginning on or after*
31 *January 1, 2006, and before January 1, 2011, there shall be*
32 *allowed as a credit against the "net tax" (as defined by Section*

1 17039) an amount equal to the sum of the amounts determined in
2 paragraph (1) of subdivision (b) for amounts paid or incurred
3 during the taxable year by an eligible employer to provide health
4 coverage for an eligible individual and that individual's
5 dependent or dependents.

6 (b) (1) The amount of the credit under subdivision (a) shall
7 not exceed the applicable of the following:

8 (A) For an eligible individual, one hundred dollars (\$100) per
9 month per covered eligible individual or 50 percent of the total
10 amount paid or incurred per month for that health coverage by
11 the employer during the taxable year, whichever is greater.

12 (B) For an eligible individual's dependent or dependents, one
13 hundred dollars (\$100) per month for the dependent or
14 dependents per covered eligible individual or 50 percent of the
15 total amount paid or incurred per month for that health coverage
16 by the employer during the taxable year, whichever is greater.

17 (2) To qualify for the credit described in subdivision (a), an
18 eligible employer, or two or more eligible employers that share
19 in expenses, shall meet both of the following conditions:

20 (A) The eligible employer or eligible employers pay or incur at
21 least 75 percent per month toward the health coverage for the
22 eligible individual and, if applicable, the eligible individual's
23 dependent or dependents, and for which the individual does not
24 pay more than 25 percent.

25 (B) At least annually, the eligible employer or eligible
26 employers make participation to enroll for health coverage
27 available to all eligible individuals described in paragraph (2) of
28 subdivision (e).

29 (3) If two or more eligible employers share in the health
30 coverage expenses, each employer shall be allowed to receive a
31 share of the tax credit in proportion to its respective share of the
32 expenses paid or incurred. In the case where the eligible
33 employer is a partnership, the tax credit may be divided among
34 the partners pursuant to a written partnership agreement in
35 accordance with Chapter 10 (commencing with Section 17851)
36 of Part 10, which includes Section 704 of the Internal Revenue
37 Code concerning substantial economic effect, relating to
38 partner's distributive share.

39 (4) This section shall not be construed to do any of the
40 following:

1 (A) Prohibit an employer from making additional health
2 benefits available to an eligible individual at the employer's or
3 eligible individual's expense.

4 (B) Require an eligible employer to pay for dependent health
5 coverage in order to qualify for the eligible individual health
6 coverage credit described in subparagraph (A) of paragraph (1).

7 (C) Require an eligible employer to make participation to
8 enroll for health coverage available to all individuals who
9 perform services for less than 35 hours per week.

10 (c) The credit allowed by this section shall be in lieu of any
11 deduction to which the taxpayer otherwise may be entitled for
12 expenses on which a credit under this section is claimed.

13 (d) The credit allowed by this section for any taxable year is
14 available only for the taxable year in which an eligible employer
15 paid or incurred expenses for the health coverage described in
16 this section.

17 (e) For purposes of this section:

18 (1) "Eligible employer" means a taxpayer that employs, on
19 the average, during the taxable year no more than 10 eligible
20 individuals. The average number of eligible individuals employed
21 during the taxable year shall be determined by dividing the total
22 number of hours for which wages are required to be reported to
23 the Employment Development Department for the calendar year
24 immediately preceding the employer's taxable year for which the
25 credit is to be allowed by 2,080 hours. "Eligible employer" does
26 not include a taxpayer that reorganizes its business in any
27 manner for the purpose of meeting the 10-eligible individual
28 limitation.

29 (2) "Eligible individual" means an individual who certifies, in
30 the form and manner prescribed by the Franchise Tax Board,
31 which certification shall be maintained by the eligible employer,
32 that he or she is a resident of California (within the meaning of
33 Section 17014), is employed by an eligible employer at a salary
34 that does not exceed three times the state minimum wage, or its
35 annual equivalent, and who does one of the following:

36 (A) Performs services for an eligible employer for an average
37 of at least 35 hours per week for remuneration.

38 (B) Performs services for an eligible employer for less than 35
39 hours per week for remuneration if the eligible employer chooses
40 to provide health coverage for that individual. For purposes of

1 *this subparagraph, an individual performing services for less*
 2 *than 35 hours a week includes a seasonal employee who, on an*
 3 *annual average, performs services for less than 35 hours per*
 4 *week.*

5 *(C) As a sole proprietor or shareholder of a business, provides*
 6 *at least an average of 35 hours per week in personal services to*
 7 *that business, for which health coverage is contracted.*

8 *(3) "Health coverage" means health care services purchased*
 9 *by the employer from a licensed health care service plan, as*
 10 *defined under subdivision (f) of Section 1345 of the Health and*
 11 *Safety Code, or a disability insurer that covers hospital, medical,*
 12 *or surgical expenses and that is licensed pursuant to the*
 13 *Insurance Code.*

14 *(e) This section shall remain in effect only until January 1,*
 15 *2012, and as of that date is repealed.*

16 *SEC. 4. Section 23658 is added to the Revenue and Taxation*
 17 *Code, to read:*

18 *23658. (a) For each taxable year beginning on or after*
 19 *January 1, 2006, and before January 1, 2011, there shall be*
 20 *allowed as a credit against the "tax" (as defined in Section*
 21 *23036) an amount equal to the sum of the amounts determined in*
 22 *paragraph (1) of subdivision (b) for amounts paid or incurred*
 23 *during the taxable year by an eligible employer to provide health*
 24 *coverage for an eligible individual and that individual's*
 25 *dependent or dependents.*

26 *(b) (1) The amount of the credit under subdivision (a) shall*
 27 *not exceed the applicable of the following:*

28 *(A) For an eligible individual, one hundred dollars (\$100) per*
 29 *month per covered eligible individual or 50 percent of the total*
 30 *amount paid or incurred per month for that health coverage by*
 31 *the employer during the taxable year, whichever is greater.*

32 *(B) For an eligible individual's dependent or dependents, one*
 33 *hundred dollars (\$100) per month for the dependent or*
 34 *dependents per covered eligible individual or 50 percent of the*
 35 *total amount paid or incurred per month for that health coverage*
 36 *by the employer during the taxable year, whichever is greater.*

37 *(2) To qualify for the credit described in subdivision (a), an*
 38 *eligible employer, or two or more eligible employers that share*
 39 *in expenses, shall meet both of the following conditions:*

1 (A) The eligible employer or eligible employers pay or incur at
2 least 75 percent per month toward the health coverage for the
3 eligible individual and, if applicable, the eligible individual's
4 dependent or dependents, and for which the individual does not
5 pay more than 25 percent.

6 (B) At least annually, the eligible employer or eligible
7 employers make participation to enroll for health coverage
8 available to all eligible individuals described in paragraph (2) of
9 subdivision (e).

10 (3) If two or more eligible employers share in the health
11 coverage expenses, each employer shall be allowed to receive a
12 share of the tax credit in proportion to its respective share of the
13 expenses paid or incurred. In the case where the eligible
14 employer is a partnership, the tax credit may be divided among
15 the partners pursuant to a written partnership agreement in
16 accordance with Chapter 10 (commencing with Section 17851)
17 of Part 10, which includes Section 704 of the Internal Revenue
18 Code concerning substantial economic effect, relating to
19 partner's distributive share.

20 (4) This section shall not be construed to do any of the
21 following:

22 (A) Prohibit an employer from making additional health
23 benefits available to an eligible individual at the employer's or
24 eligible individual's expense.

25 (B) Require an eligible employer to pay for dependent health
26 coverage in order to qualify for the eligible individual health
27 coverage credit described in subparagraph (A) of paragraph (1).

28 (C) Require an eligible employer to make participation to
29 enroll for health coverage available to all individuals who
30 perform services for less than 35 hours per week.

31 (c) The credit allowed by this section shall be in lieu of any
32 deduction to which the taxpayer otherwise may be entitled for
33 expenses on which a credit under this section is claimed.

34 (d) The credit allowed by this section for any taxable year is
35 available only for the taxable year in which an eligible employer
36 paid or incurred expenses for the health coverage described in
37 this section.

38 (e) For purposes of this section:

39 (1) "Eligible employer" means a taxpayer that employs, on
40 the average, during the taxable year no more than 10 eligible

1 individuals. The average number of eligible individuals employed
2 during the taxable year shall be determined by dividing the total
3 number of hours for which wages are required to be reported to
4 the Employment Development Department for the calendar year
5 immediately preceding the employer's taxable year for which the
6 credit is to be allowed by 2,080 hours. "Eligible employer" does
7 not include a taxpayer that reorganizes its business in any
8 manner for the purpose of meeting the 10-eligible individual
9 limitation.

10 (2) "Eligible individual" means an individual who certifies, in
11 the form and manner prescribed by the Franchise Tax Board,
12 which certification shall be maintained by the eligible employer,
13 that he or she is a resident of California (within the meaning of
14 Section 17014), is employed by an eligible employer at a salary
15 that does not exceed three times the state minimum wage, or its
16 annual equivalent, and who does one of the following:

17 (A) Performs services for an eligible employer for an average
18 of at least 35 hours per week for remuneration.

19 (B) Performs services for an eligible employer for less than 35
20 hours per week for remuneration if the eligible employer chooses
21 to provide health coverage for that individual. For purposes of
22 this subparagraph, an individual performing services for less
23 than 35 hours a week includes a seasonal employee who, on an
24 annual average, performs services for less than 35 hours per
25 week.

26 (C) As a sole proprietor or shareholder of a business, provides
27 at least an average of 35 hours per week in personal services to
28 that business, for which health coverage is contracted.

29 (3) "Health coverage" means health care services purchased
30 by the employer from a licensed health care service plan, as
31 defined under subdivision (f) of Section 1345 of the Health and
32 Safety Code, or a disability insurer that covers hospital, medical,
33 or surgical expenses and that is licensed pursuant to the
34 Insurance Code.

35 (e) This section shall remain in effect only until January 1,
36 2012, and as of that date is repealed.

37 SEC. 5. On or before December 1, 2009, the Legislative
38 Analyst shall report to the Legislature on the impact of this act
39 on the provision of health coverage to employees and their
40 dependents by small employers.

1 ~~SEC. 6. This act provides for a tax levy within the meaning of~~
2 ~~Article IV of the Constitution and shall go into immediate effect.~~

3 ~~SECTION 1. Section 17053.58 is added to the Revenue and~~
4 ~~Taxation Code, to read:~~

5 ~~17053.58. (a) For each taxable year beginning on or after~~
6 ~~January 1, 2006, and before January 1, 2011, there shall be~~
7 ~~allowed as a credit against the “net tax,” as defined in Section~~
8 ~~17039, an amount equal to 50 percent of the amount paid or~~
9 ~~incurred during the taxable year for qualified employee health~~
10 ~~insurance expenses by a qualified small employer.~~

11 ~~(b) For purposes of this section, the following terms have the~~
12 ~~following meanings:~~

13 ~~(1) “Qualified small employer” means an employer that meets~~
14 ~~both of the following conditions:~~

15 ~~(A) The employer provides eligibility for health insurance~~
16 ~~coverage after any waiting period, as defined in Section~~
17 ~~9801(b)(4) of the Internal Revenue Code, to all of its employees.~~

18 ~~(B) The employer employed an average of not fewer than two,~~
19 ~~and not more than 100 employees in the state per business day~~
20 ~~during the entirety of either of the two calendar years that~~
21 ~~immediately preceded the taxable year in which the qualified~~
22 ~~employee health insurance expenses were paid or incurred. If the~~
23 ~~employer was not in existence during the entirety of the calendar~~
24 ~~year that immediately preceded the taxable year in which the~~
25 ~~qualified employee health insurance expenses were paid or~~
26 ~~incurred, the employer reasonably expects to employ an average~~
27 ~~of not fewer than two, and not more than 100 employees in the~~
28 ~~state per business day during the entirety of the current calendar~~
29 ~~year.~~

30 ~~(2) “Qualified employee health insurance expenses” means the~~
31 ~~amount paid or incurred by a qualified small employer for health~~
32 ~~insurance coverage for its employees, but does not include any~~
33 ~~amount so paid or incurred pursuant to a salary reduction~~
34 ~~arrangement between the employer and employee.~~

35 ~~(c) The maximum credit that may be claimed by any taxpayer~~
36 ~~in any taxable year under subdivision (a) is ten thousand dollars~~
37 ~~(\$10,000).~~

38 ~~(d) In the case where the credit allowed by this section~~
39 ~~exceeds the “net tax,” the excess may be carried over to reduce~~

1 the “net tax” in succeeding years, if necessary, until the credit is
2 exhausted.

3 (e) ~~No other credit or deduction shall be allowed under other~~
4 ~~provisions of this part for qualified employee health insurance~~
5 ~~expenses for which a credit is taken under this section.~~

6 (f) ~~This section shall remain in effect only until January 1,~~
7 ~~2012, and as of that date is repealed.~~

8 SEC. 2. ~~Section 23658 is added to the Revenue and Taxation~~
9 ~~Code, to read:~~

10 ~~23658. (a) For each taxable year beginning on or after~~
11 ~~January 1, 2006, and before January 1, 2011, there shall be~~
12 ~~allowed as a credit against the “tax,” as defined in Section 23036,~~
13 ~~an amount equal to 50 percent of the amount paid or incurred~~
14 ~~during the taxable year for qualified employee health insurance~~
15 ~~expenses by a qualified small employer.~~

16 (b) ~~For purposes of this section, the following terms have the~~
17 ~~following meanings:~~

18 (1) ~~“Qualified small employer” means an employer that meets~~
19 ~~both of the following conditions:~~

20 (A) ~~The employer provides eligibility for health insurance~~
21 ~~coverage after any waiting period, as defined in Section~~
22 ~~9801(b)(4) of the Internal Revenue Code, to all of its employees.~~

23 (B) ~~The employer employed an average of not fewer than two,~~
24 ~~and not more than 100 employees in the state per business day~~
25 ~~during the entirety of either of the two calendar years that~~
26 ~~immediately preceded the taxable year in which the qualified~~
27 ~~employee health insurance expenses were paid or incurred. If the~~
28 ~~employer was not in existence during the entirety of the calendar~~
29 ~~year that immediately preceded the taxable year in which the~~
30 ~~qualified employee health insurance expenses were paid or~~
31 ~~incurred, the employer reasonably expects to employ an average~~
32 ~~of not fewer than two, and not more than 100 employees in the~~
33 ~~state per business day during the entirety of the current calendar~~
34 ~~year.~~

35 (2) ~~“Qualified employee health insurance expenses” means the~~
36 ~~amount paid or incurred by a qualified small employer for health~~
37 ~~insurance coverage for its employees, but does not include any~~
38 ~~amount so paid or incurred pursuant to a salary reduction~~
39 ~~arrangement between the employer and employee.~~

1 ~~(e) The maximum credit that may be claimed by any taxpayer~~
2 ~~in any taxable year under subdivision (a) is ten thousand dollars~~
3 ~~(\$10,000).~~

4 ~~(d) In the case where the credit allowed by this section~~
5 ~~exceeds the “tax,” the excess may be carried over to reduce the~~
6 ~~“tax” in succeeding years, if necessary, until the credit is~~
7 ~~exhausted.~~

8 ~~(e) No other credit or deduction shall be allowed under other~~
9 ~~provisions of this part for qualified employee health insurance~~
10 ~~expenses for which a credit is taken under this section.~~

11 ~~(f) This section shall remain in effect only until January 1,~~
12 ~~2012, and as of that date is repealed.~~

13 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
14 ~~Article IV of the Constitution and shall go into immediate effect.~~